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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/060,494	01/29/2002	Yu-Hsuan Tsai	67,200-663	6938
7590 02/25/2004			EXAMINER	
TUNG & ASSOCIATES 838 W. Long Lake Road, Suite 120 Bloomfield Hills, MI 48302			ART UNIT PAPER NUMBER	

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Communication Re: Appeal**

**Application No.**

10/060,494

**Applicant(s)**

TSAI, YU-HSUAN

**Examiner**

W. David Coleman

**Art Unit**

2823

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

1. ☒ The Notice of Appeal filed on December 8, 2003 is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
- (c) ☐ the appeal fee received on \_\_\_\_\_ was not timely filed.
- (d) ☐ the submitted fee of \$\_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$\_\_\_\_\_.
- (e) ☒ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on \_\_\_\_\_.

2. ☐ The appeal brief filed on \_\_\_\_\_ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 1.192.
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
- (c) ☐ the submitted brief fee of \$\_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$\_\_\_\_\_.

**The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).**

3. ☐ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (c) ☐ Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on \_\_\_\_\_.
- (d) ☐ other: \_\_\_\_\_

4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.

W. David Coleman  
Primary Examiner  
Art Unit: 2823

### DETAILED ACTION

1. To expedite the resolution of cases under final rejection, an amendment filed at any time after final rejection, but before jurisdiction has passed to the Board (see MPEP § 1210), may be entered upon or after filing of an appeal brief provided that the amendment conforms to the requirements of 37 CFR 1.116. *For example, if the amendment necessitates a new search, raises the issue of new matter, presents additional claims without cancelling a corresponding number of finally rejected claims, or otherwise introduces new issues, it will not be entered. A new amendment, new affidavit, or other new evidence must be submitted in a paper separate from the appeal brief. Entry of a new amendment, new affidavit, or other new evidence in an application on appeal is not a matter of right.* The entry of an amendment (which may or may not include a new affidavit, declaration, or exhibit) submitted in an application on appeal continues to be governed by 37 CFR 1.116, and the entry of a new affidavit or other new evidence in an application on appeal is governed by 37 CFR 1.195. Examiners must respond to all nonentered amendments after final rejection, and indicate the status of each claim of record or proposed, including the designation of claims that would be entered on the filing of an appeal if filed in a separate paper. If the examiner indicates (in the advisory action) that a proposed amendment of the claim(s) would be entered for purposes of appeal, it is imperative for the examiner to also state (in the same advisory action) how the individual rejection(s) set forth in the final Office action will be used to reject the added or amended claim(s) in the examiner's answer. See 37 CFR 1.193(a)(2) and MPEP § 1208.01.
2. Except where an amendment merely cancels claims and/or adopts examiner suggestions,

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removes issues from appeal, or in some other way requires only a cursory review by the examiner, compliance with the requirement of a showing under 37 CFR 1.116 will be expected of all amendments after final rejection.

If, after appeal has been taken, a paper is presented which on its face clearly places the application in condition for allowance, such paper should be entered and a Notice of Allowability form PTOL-37 promptly sent to applicant.

3. In accordance with the above, the brief must be directed to the claims and to the record of the case as they appeared at the time of the appeal, but it may, of course, withdraw from consideration on appeal any claims or issues as desired by appellant. Even if the appeal brief withdraws from consideration any claims or issues (i.e., appellant acquiesces to any rejection), the examiner must continue to make the rejection in the examiner's answer, unless an amendment obviating the rejection has been previously proposed and entered.

4. A timely filed brief will be referred to the examiner for consideration of its propriety as to the appeal issues and for preparation of an examiner's answer if the brief is proper and the application is not allowable. The examiner's answer may withdraw the rejection of claims, if appropriate. The examiner may also determine that it is necessary to reopen prosecution to enter a new ground of rejection. Note MPEP § 1208.02. No new ground of rejection, however, is permitted in an examiner's answer. 37 CFR 1.193(a)(2). See MPEP § 714.13 for procedure on handling amendments filed after final action and before appeal.

5. An amendment received after jurisdiction has passed to the Board should not be

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considered by the examiner unless remanded by the Board for such purpose. See MPEP

§ 1210 and § 1211.01.

6. Note that 37 CFR 1.192(c)(4) requires a statement as to the status of any amendment filed subsequent to the final rejection. See also MPEP § 1206

7. Applicants are given 1 MONTH or 30 DAYS to comply with MPEP 1207.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to W. David Coleman whose telephone number is 571-272-1856.

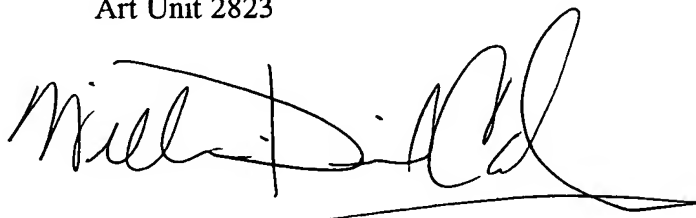
The examiner can normally be reached on 9:00 AM-5:00 PM.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Olik Chaudhuri can be reached on 571-272-1855. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

W. David Coleman  
Primary Examiner  
Art Unit 2823

WDC

A handwritten signature in black ink, appearing to read 'W. David Coleman', with a long horizontal flourish extending to the right.